

1 Todd M. Friedman (SBN 216752)
2 Adrian R. Bacon (SBN 280332)
3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
4 21550 Oxnard St., Suite 780
5 Woodland Hills, CA 91367
6 Phone: 323-306-4234
7 Fax: 866-633-0228
8 tfriedman@toddflaw.com
9 abacon@toddflaw.com
10 *Attorneys for Plaintiff*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SIDNEY NAIMAN, individually and)
on behalf of all others similarly situated,) Case No.

Plaintiff,

vs.

RESORT POINTS, LLC; LEISURE
GETAWAYS INCORPORATED,
LLC; and DOES 1 through 10,
inclusive, and each of them,

Defendants.

) **CLASS ACTION**

) **CLASS ACTION COMPLAINT**
FOR VIOLATIONS OF:

) 1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]

) **DEMAND FOR JURY TRIAL**

Plaintiff, SIDNEY NAIMAN (“Plaintiff”), individually and on behalf of all
others similarly situated, alleges the following upon information and belief based

1 upon personal knowledge:

2 **NATURE OF THE CASE**

3 1. Plaintiff brings this action individually and on behalf of all others
4 similarly situated seeking damages and any other available legal or equitable
5 remedies resulting from the illegal actions of RESORT POINTS, LLC and
6 LEISURE GETAWAYS INCORPORATED, LLC (“Defendants”), in negligently,
7 knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in
8 violation of the Telephone Consumer Protection Act, *47. U.S.C. § 227, et seq.*
9 (“TCPA”), thereby invading Plaintiff’s privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under *28 U.S.C. § 1331* because this case arises
12 under a law of the United States, the TCPA.

13 3. Venue is proper in the United States District Court for the Eastern
14 District of California pursuant to *28 U.S.C. § 1391(b)*, because a substantial part of
15 the events or omissions giving rise to the claim occurred within this District.

16 **PARTIES**

17 4. Plaintiff, SIDNEY NAIMAN (“Plaintiff”), is a natural person residing
18 in Butte County, California and is a “person” as defined by *47 U.S.C. § 153(39)*.

19 5. Defendant, RESORT POINTS, LLC (“Defendant”), is a Texas limited
20 liability company and is a “person” as defined by *47 U.S.C. § 153(39)*.

21 6. Defendant, LEISURE GETAWAYS INCORPORATED, LLC
22 (“Defendant”), is a Texas limited liability company and is a “person” as defined by
23 *47 U.S.C. § 153(39)*.

24 7. The above-named Defendants, and their subsidiaries and agents, are
25 collectively referred to as “Defendants.” The true names and capacities of the
26 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
27 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
28 names. Each of the Defendants designated herein as a DOE is legally responsible

for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

8. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

9. Beginning in or around March 2019, Defendants contacted Plaintiff on Plaintiff's cellular telephone number ending in -6535, in an attempt to solicit Plaintiff to purchase Defendants' services.

10. Defendants used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

11. Defendants contacted or attempted to contact Plaintiff from telephone number (925) 308-5349, confirmed to be Defendants' number.

12. Defendants' call constituted a call that was not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

13. During all relevant times, Defendants did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

CLASS ALLEGATIONS

14. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of a proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any

telephone calls from Defendants to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls, within the four years prior to the filing of the Complaint through the date of class certification.

15. Plaintiff represents, and is a member of, The Class, consisting of all persons within the United States who received any telephone calls from Defendants to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within four years prior to the filing of the original Complaint.

16. Defendants, their employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

17. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendants.

18. Plaintiff and members of The Class were harmed by the acts of Defendants in at least the following ways: Defendants illegally contacted Plaintiff and the Class members on their cellular telephones, thereby causing Plaintiff and the Class members to incur certain charges or reduced telephone time for which Plaintiff and the Class members had previously paid, by having to retrieve or administer calls and messages left by Defendants during those illegal calls, and

1 invading the privacy of said Plaintiff and the Class members.

2 19. Common questions of fact and law exist as to all members of The
3 Class which predominate over any questions affecting only individual members of
4 The Class. These common legal and factual questions, which do not vary between
5 Class members, and which may be determined without reference to the individual
6 circumstances of any Class members, include, but are not limited to, the following:

- 7 a. Whether, within the four years prior to the filing of the original
8 Complaint, Defendants made any call (other than a call made
9 for emergency purposes or made with the prior express consent
10 of the called party) to a Class member using any automatic
11 telephone dialing system or any artificial or prerecorded voice,
12 to any telephone number assigned to a cellular telephone
13 service;
- 14 b. Whether Plaintiff and the Class members were damaged
15 thereby, and the extent of damages for such violation; and
- 16 c. Whether Defendants should be enjoined from engaging in such
17 conduct in the future.

18 20. As a person that received a call from Defendants using an automatic
19 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's
20 prior express consent, Plaintiff is asserting claims that are typical of The Class.

21 21. Plaintiff will fairly and adequately protect the interests of the members
22 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
23 class actions.

24 22. A class action is superior to other available methods of fair and
25 efficient adjudication of this controversy, since individual litigation of the claims
26 of all Class members is impracticable. Even if every Class member could afford
27 individual litigation, the court system could not. It would be unduly burdensome to
28 the courts in which individual litigation of numerous issues would proceed.

Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

23. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

24. Defendants have acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of The Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

26. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227(b)(1)(A)*.

27. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

28. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

29. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

30. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227(b)(1)(A)*.

31. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

32. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

- As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227(b)

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3).
- Any and all other relief that the Court deems just and proper.

33. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st Day of December, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman, P.C.
Attorney for Plaintiff